

BOARD OF SUPERVISORS

GILA COUNTY, ARIZONA

Date: September 23, 2005

JOSÉ M. SANCHEZ

Chairman

STEVEN L. BESICH

Clerk of the Board

TOMMIE C. MARTIN

Vice-Chairman

By: Marilyn Brewer

Deputy Clerk

SHIRLEY L. DAWSON

Member

Gila County Courthouse
Globe, Arizona

PRESENT: Jose M. Sanchez, Chairman; Tommie C. Martin, Vice-Chairman; Shirley L. Dawson, Member; and Jacque Griffin, Assistant County Manager/County Librarian.

The Gila County Board of Supervisors met in Work Session at 9:00 a.m. this date. Jacque Griffin led the Pledge of Allegiance.

Vice-Chairman Martin stated that she doesn't like how the Board has to operate because of the Open Meeting Law constraints, so she requested this Work Session in order to present the Board with some background information, as well as information on a meeting held in Star Valley with a hydrologist, Mr. Schumann, both of which are in regard to an agenda item that will be discussed at the Board's next regular meeting. She stated that in regard to water issues in Arizona, the State, municipalities, and the Arizona Department of Water Resources have standing in the conversations, but counties have no standing, with the exception of limited standing if the County is in an active management area. She stated that there are 3,500 acre feet of water rights out of the Blue Ridge Reservoir that will soon be available. 3,000 acre feet will go to the Town of Payson; the other 500 acre feet could be available for the County, if the County can find a way to have standing in the conversation. Vice-Chairman Martin stated that Attorney David Kennedy was given a contract by

the County to look at language that allows the County to have standing. Mr. Kennedy will bring that language to the Board, and the Board will probably be looking at a water authority type of conversation, an entity that is not a taxing authority but could charge fees, collect fees, charge for services, etc. The Board of Supervisors would then appoint a board for the water authority, and it would become an extension of Gila County and have standing in the conversation. If the Board of Supervisors votes to take that route, it would be a several-year conversation at the Legislature as legislative action would be required. She stated that because this has previously been discussed in the Legislature, it would stand a better chance of passing the second time around, but would take active lobbying on the part of the Board. Vice-Chairman Martin stated that if the County could acquire the 500 acre feet of water and the water rights, it would allow the County to ensure that the 88 subdivisions that lie up under the rim of northern Gila County would then have equal access to that water, along with each being involved in the conversations. She stated that Pine is included in the conversation and some trading might be possible of Pine's Blue Ridge water rights/acre feet for surface acre feet in Pine, for possibly trading back to Salt River Project. Vice-Chairman Martin then showed maps to the Board that showed the water area. She stated that in reference to the Star Valley water, the 'best guess' is that the water is coming from below the Diamond Rim, which is located in District 1. The wells that are being tapped into right now are located in Star Valley, which is in Supervisorial District 3, and Mr. Horton's proposed subdivision that this water will be directed to is in Supervisorial District 2 and located at the end of East Phoenix Street, which ties back into Supervisorial District 1 as the Payson Town Council making these decisions are Supervisorial District 1 residents. Vice-Chairman Martin showed the Board the locations on the maps of the subject areas in the 3 Supervisorial Districts, including Mr. Horton's properties and his proposed development. She stated that Mr. Horton has been in contact with the Town of Payson and her office about a possible municipal complex at the old WalMart area; however, Barbara

Brewer, Mayor of Payson, would like the municipal complex to be located in the meadow by Green Valley Park and would like Gila County to enter into conversations about utilizing the same location for a new County complex. Vice-Chairman Martin agreed that the Green Valley Park area is a beautiful spot; however, the County would need to build a 200-bed jail, with razor wire and 24 hour lights, which would probably not be suitable for that beautiful area. She stated that the development that's causing all the 'grief' about the water is the proposed Forest Edge Development, located at the edge of the Town of Payson city limits, which she pointed out on the maps to the Board. Chairman Sanchez stated that he was not aware until this morning that this particular proposed housing development water acquisition was the object of all the water conversations in Star Valley. Vice-Chairman Martin also discussed with the Board the various locations of Mr. Horton's properties for development, which will also need water. She stated that what has raised the ire in Payson is this development and that is why the referendum petitions were passed in the Town of Payson because of the water coming directly to allow this development to occur. Vice-Chairman Martin then discussed with the Board the upcoming need for a new County complex in northern Gila County and cited the reasons including the need for secure courtrooms, which would be accomplished by a jail facility with an attached courtroom. She stated that the Town of Payson has asked if the County would be interested in having a combined County/Town complex, which she believes would make good sense for the resources; however, the County has some up front requirements that must be met. Wherever the site for the County complex is located there will still be water issues, whether it's located within the Town of Payson or the Star Valley area, and it is "all speculation at this point." Vice-Chairman Martin then returned to the Star Valley landfill issue and stated that at the Star Valley initial meeting in March or April, the residents of that area raised the question that if there is to be the kind of pumping that can occur out of the deep wells, without some type of 'brakes' put on the pumping, like the safe water yield

conversation, will it create a vacuum and begin to pull anything that is leachable out of the landfill because of the vacuum created by the pumping? Is there something there to leach? She stated that at that time, the well referred to by the Star Valley residents was located almost adjacent to the County landfill, and that well was cased down to 600 feet with perforated casing. Star Valley has a 200 foot deep water table and has since discovered that by going down to 600 feet there is another batch of water. Two questions being asked are as follows: "Are the two levels the same water or different water?" With that particular well that is cased with perforated casing all the way down, if it is pumped is it pulling water from both levels? Chairman Sanchez inquired as to whose well she was referring, and Vice-Chairman Martin replied that the well was Mike Horton's well, which was located next to Chris Benjamin's Sky Park Mobile Home Park in Star Valley, and located just south of the old County landfill. Having lived in the area while growing up, she then explained about the old landfill which was mostly used for emptying burned ashes from people's personal trash burning barrels and on occasion when it would fill up with trash, it would be set on fire and burned. She stated that during those early years the few businesses in the area didn't have much toxic waste and used oil was poured onto the roads to preserve them. The landfill was basically a "burn pit" until 1980 when the Department of Environmental Quality was created and stopped the landfill burning. Vice-Chairman Martin stated that her argument is that up until 1980 there couldn't have been much that went into the old landfill, other than old batteries, old refrigerators, and some tires; it was not like a landfill in Phoenix where "anything and everything went into it", so she would be surprised if there was much of anything in the landfill to leach. She stated the question remains, if it does leach is the County liable? Vice-Chairman Martin feels if any leaching can be stopped before it gets into the groundwater, that's what the County should be doing, not waiting until it is polluted and then trying to figure out how to clean it. She believes there are three areas of concern: 1) the landfill, 2) an old gas station that may or may

not have had a fuel leak, and 3) the septic tanks all over the area, and questions about these areas are what she would like Mr. Kennedy to answer. She stated that in a letter the Board received from Mr. Kennedy last week, he referred to a retired hydrologist he had retained by the name of Herbert Schumann, along with background information on Mr. Schumann. Supervisor Dawson stated that she only received an email but did not receive a resume on Mr. Schumann. She stated, “You [Vice-Chairman Martin] *talked about in the beginning that you don’t like the way we do business. I really don’t like the way we do business and this is one of the examples. You and Chairman Sanchez know I’ve asked for policies, procedures and processes to be placed on the agenda, but that was too general to be placed on the agenda. You [Chairman Sanchez] refused to allow a work session for that purpose. We hired Mr. Kennedy. He is a consultant for Gila County. He charges us by the hour. He said in his letter he had a meeting with you and others, Mrs. Martin, and says ‘I have retained Mr. Herb Schumann, a highly qualified geologist, to analyze the groundwater information that the County presently has available and recommend further actions necessary to develop information required to make an informed decision.’ I have absolutely no knowledge of Mr. Herb Schumann, and have nothing against the man whatsoever. The policies, practices and procedures of this Board stink as far as us allowing an attorney to encumber the finances of Gila County to go out and hire a geologist without the Board involvement. For one Board member to meet and say the calls that I received that I did not make to the people in Star Valley [unfinished]. Last Friday morning at 7:45 a.m., I received a call saying ‘you guys are going to hire us a geologist and why aren’t you, Mrs. Dawson, going to be here for this meeting?’ I didn’t know about the meeting. Steve Stratton had tried to get hold of me. My question, my concern has absolutely nothing to do with whether we need a geologist, what the procedure we need to undertake is, it is the practice of hiring whomever one person of the Board decides needs to be hired. Or, now we’ve gone to the extreme of actually a hired consultant hiring, having authority to hire, an open-ended contract, because we*

still do not have a policy on how to develop a contract with others. I believe it is wrong for the taxpayers of Gila County to be expected to pay for whomever one of us may decide we need to have additional knowledge. We have a Public Works Department that is capable of making recommendations to us in this way. I appreciate that we need to study these issues and certainly the people in Star Valley have that concern. After that meeting Friday, I understand you [Vice-Chairman Martin] were going to also meet with the Town of Payson and make the offer. Then I understand that the Town of Payson got on the radio, their czar, and said 'we don't need anymore; we've already paid high and we've got visional problem here.' So now we have hired, through our attorney, this individual and will ratify that issue next Tuesday that this gentleman has been hired, and Payson's not going to accept what he has to say anyway." Chairman Sanchez stated, "Before you go there, let me say, I just want to comment that this is a water issue meeting, and I'm going to keep it as far as water issues. Other issues that we have brought up here about County policies and procedures stinking and how we're going to address those things will be for another time. Just let me point out to you Supervisor [Dawson] that we have made available to you policies and procedures, for example, putting agenda items on the agenda, what those procedures are, with very specific times and dates, and somehow you are not able to understand or comprehend or comply with simple instructions on how to get something on the agenda. So, beyond that then, I want to keep this what the agenda item is and that is northern Gila County water issues. Those others about policies and procedures will be a subject of some other meeting. I will not allow, from this point on, any other discussions about those types of things. Thank you." Supervisor Dawson stated, "When was this meeting scheduled? When was this meeting put on an agenda to be [unfinished]? That's what I'm saying. We don't follow policies and procedures." Chairman Sanchez stated, "We do follow policies and procedures and very distinct, written ones should be simple for anyone to follow." Vice-Chairman Martin stated that Mr. Kennedy had called her and said he felt the Board needed to talk to Mr. Schumann to determine if

he could help to Board answer the Board's water-related questions. She stated this occurred the week Supervisor Dawson was on vacation. Vice-Chairman Martin stated what she thinks the Board needs to consider, as far as Mr. Schumann working through the County-hired attorney, Mr. Kennedy. She believes that the information should come to the Board from Mr. Kennedy, with client/attorney privilege, so that the information is not 'piecemealed' out, but complete and released as such. Any questions would be addressed through the attorney, with the attorney providing that information and maintaining the attorney relationship. She feels that by working directly with a hydrologist, there is the possibility of leaking information and adding to the 'rumor mill.'

Vice-Chairman Martin stated that the County group met with Mr. Schumann and discussed the available information. She would like the Board to hire someone who has no involvement with any of the groups now involved with the landfill/water issues in Star Valley; someone that is recognized as an expert by both the Town of Payson and the residents of Star Valley so his findings would be trusted; and, someone who could give the County good information because of his professional background. Vice-Chairman Martin stated that the single biggest 'lack' regarding these issues in northern Gila County is the 'lack of trust.' She feels the Board needs some good information because it needs to make some decisions on the landfill. Vice-Chairman Martin stated some of the questions that need to be answered are as follows: Can the landfill leach? Is there something there to leach? If it leaches, is it the County's liability? Could core drilling be done by the side of the landfill? Does geology even lend to the situation? Are the monitoring wells located where they are because that's the best place to locate them to get information, or are they located there because it was easy to drill there? Is there a need for one more well in that area that would be more apt to give an early warning sign for any leaching? Will the Town of Payson continue with its proposal on a safe yield study for all of Star Valley and surrounding areas? If the Town of Payson does pump water out of Star Valley at a safe yield rate, is there any possibility of 'moving' anything out

of the landfill? If the Town of Payson continues to do safe water yield from Star Valley, does that even set up the dynamics for movement at the landfill?

Chairman Sanchez inquired if the Board wished to discuss the questions about monitoring at the landfill and if that was related enough to the agenda item for discussion. Chairman Sanchez also noted that Richard Petrus, Manager of Phoenix Operations for Hydro Geo Chem Inc., was present at today's meeting. Mr. Stratton stated that he has been in consultation with Mr. Petrus as a consultant on the landfill for Gila County, and Mr. Petrus has been looking at many of the things Vice-Chairman Martin has been talking about; however, he felt it may be too preliminary for Mr. Petrus to discuss those issues at today's meeting. Mr. Stratton stated that he will be getting a written report from Mr. Petrus, and he will submit that report to Mr. Besich for distribution to the Board at the appropriate time. Chairman Sanchez inquired if Mr. Petrus has an agreement or contract with the current Board or was he a consultant approved by a previous Board. Mr. Stratton replied that Mr. Petrus was hired by a previous Board and stated that Mr. Petrus was only present at today's meeting because of his interest in this issue. Chairman Sanchez stated that one of the things suggested by Mr. Kennedy about the County's responsibility, if the old dumpsite contaminates the Star Valley water supply, is that the County first determine if there are contaminants at the dumpsite, what they are, their volume and state, etc. Mr. Stratton stated that a copy of Mr. Kennedy's letter was forwarded to Mr. Petrus and because of Mr. Petrus' involvement in other places with similar issues, it would be good to wait for Mr. Petrus' response. Chairman Sanchez stated that this is a very important issue in his estimation, and in talking to people in Star Valley, it is definitely an opinion of some that contamination will come from this dumpsite, so he feels all this Board can do is try to obtain definite answers to those questions by qualified people, conducting sampling, and reviewing lab results. Supervisor Dawson stated that she agrees with protecting the County's liability with regard to the old dumpsite and getting data that's accurate from an independent

person. She also stated that there is the Wellhead Protection Act and that Mr. Besich said this material is dated. She stated that the material was prepared by the Arizona Department of Environmental Quality (ADEQ), and ADEQ says monitoring must be done within a half mile radius of the potential contaminant. Supervisor Dawson believes that the Board can spend a lot of money trying to bring about a solution to the Town of Payson's water, but the Town of Payson is not going to accept anything the County has to say. She feels that in order to protect the County's liability, which should be the Board's focus, the Wellhead Protection Act is a way that ADEQ agrees that the County can protect itself from liability, and she would like to see the Board move in that direction. Supervisor Dawson stated she was asked this morning by a Payson radio station the reason the Board was holding this meeting in southern Gila County to discuss northern Gila County water issues. She explained that the water issues of northern Gila County, especially when discussing the contamination of water is a County-wide, taxpayer issue. She stated that Mr. Kennedy has made it clear that the County has liability if there is contamination of the water, and feels the study should remain focused on protecting Gila County and not side with any groups. Chairman Sanchez stated that the Board should be protecting and identifying exactly what the County's standing is regarding the water issues of all of Gila County. Chairman Sanchez then stated that he wanted to clarify the standing of Mr. Schumann, as Supervisor Dawson had stated that the County would be paying for his services, although he was hired by Mr. Kennedy. Supervisor Dawson explained that in Mr. Kennedy's letter at the bottom of page 4, Mr. Kennedy states that he has retained Mr. Herb Schumann, and she does not believe that Mr. Kennedy will pay Mr. Schumann to do the work for Gila County, and Mr. Schumann's bill will come to the County just like any other consultant. Vice-Chairman Martin stated that two things that need to be done are, as follows: 1) work with every well owner in Star Valley that is willing to work with the County by allowing the County on their property to take water quality and well

depth readings in order to build a data base of water quality in that area, as this has never been done; the County does not have a baseline on the water quality in order to know if pollution occurs; and, 2) if the County is talking safe water yield, the County would be able to pick up immediately in the well depths, if safe water yield is being practiced, and if not, then the Board would need to be concerned about the movement of the landfill material. She stated those two items would be a simple, quick and easy way of helping both Star Valley and the County keep track. Vice-Chairman Martin stated that in reference to Mr. Schumann and the meeting with him last Friday, she explained how the meeting came about and how Mr. Schumann was willing to speak to the residents of Star Valley to see if he would be someone whose data they would trust. She also wanted to take his information to the Town of Payson to see if they would recognize that his data is valid. It was discussed at that meeting what Mr. Schumann's role would be, and Vice-Chairman Martin believes the County needs him to look at Gila County's existing data, not generate more data, and tell the Board if the existing information is sound, if there is integrity in the gathering of that data, and if the Board can rely on the results, and then go from there. She would also like Mr. Schumann to look at the information gathered by Star Valley and the Town of Payson and give the Board an analysis of whether that data is sound, if more information is needed, if are there any problems with the data, and if further testing is required. She stated that her other question to the group at that meeting was whether there are other questions that need to be addressed with regard to the landfill. In reference to this meeting held in Star Valley with Mr. Schumann, Vice-Chairman Martin gave the other Board members a recorded tape of that meeting. She stated that some of the residents of Star Valley were interested in perhaps hiring Mr. Schumann as they like the answers that he gave in a straight-forward manner. After the meeting in the afternoon, Vice-Chairman Martin had Harry Jones introduce Mr. Schumann to Mike Ploughe, Hydrologist for the Town of Payson, who knew of Mr. Schumann only by reputation. Vice-

Chairman Martin stated Mr. Ploughe told Mr. Schumann if the County does hire him, he would have access to all of the Town of Payson's material. Mr. Ploughe also asked Mr. Schumann to be on the Town of Payson's Selection and Review Committees for the safe water yield for Star Valley. Vice-Chairman Martin reiterated that as of last Friday, both Star Valley residents and the Town of Payson would trust Mr. Schumann's findings. Vice-Chairman Martin stated that at the Board's meeting next week, she would like the Board to discuss, through instructions to Mr. Kennedy, if the Board should have Mr. Schumann make all the analyses for the County as to whether the data that the County already has is sound; if the data from both Star Valley and the Town of Payson is sound; and, if there is enough data for the County to make a decision about the landfill or is more data required? She stated that this isn't about Mr. Schumann or Mr. Kennedy gathering data, but rather to advise the Board on the existing data and what the County might need in the future. Chairman Sanchez and Supervisor Dawson again went into discussions on how the hiring of Mr. Schumann by Mr. Kennedy obligates the County. Supervisor Dawson stated, *"Since the County doesn't have a policy on how County contracts/consultants operate, then I assume that a consultant, if they have a flat contract, an open book to us, then in order to do Mr. Kennedy's job, he has authority currently to go out and hire as many consultants as he sees necessary to do whatever it is that we want him to do. I believe we need to let Payson and Star Valley take care of their water issues. It baffles me that Payson is spending all this money buying a well in Star Valley, and all the other exercises they are going through, when they have this Blue Ridge water, and why aren't they focusing on it. I've been told they have the model program in water conservation for the State of Arizona. They have 20 years of plenty of water, and in 20 years they ought to be able to conserve their funds into obtaining their 3,000 acre feet of water from Blue Ridge and be working on that instead of robbing this water out of Star Valley or having this big fight and split. The people of Diamond Star have more than enough signatures for their incorporation. They're going to have their water issues*

forever. I believe we need to focus and believe that Public Works should have been and continue to work on protecting Gila County from liability. That's what they do whether it's roads or old dump sites." Supervisor Dawson also stated that she did not want to get into the battle on safe water yields, but to only protect Gila County on the landfill. Vice-Chairman Martin clarified that her proposal is strictly about the questions that have been raised with regard to the landfill, and she wants Mr. Schumann to analyze the current data, and advise if further data is needed to answer all of the questions pertaining to the landfill. Mr. Stratton stated, *"It could be our recommendation that we would have to participate in some type of drawdown testing in Star Valley in order to ascertain if we may or may not have a liability with the landfill, and I want to bring that up now so that the Board will know they may be coming back in the future recommending that. We won't know until we gather what data there is and use it, along with Mr. Petrus being our landfill consultant, having been involved in water issues in the past. It is pertinent that we be involved in any drawdown and monitoring issues."* Supervisor Dawson spoke about Buzz Walker stating that "you can get an opinion wherever you can buy it," but she's hoping Mr. Schumann can give the Board some independent information, and she would like to see Mr. Schumann stay away from the Town of Payson as much as possible. Supervisor Dawson stated that she would like to pursue establishing a Wellhead Protection Act because in her estimation that is the answer to the liability for Gila County. She also stated, *"We now have on file a letter from our very own attorney [David Kennedy] telling us that if this contaminates, it's impossible to clean it up...And he says further that the County is probably the principal or only defendant in the issue."* Chairman Sanchez inquired of Supervisor Dawson if she had a question about the Wellhead Protection Act document and that what the Board is presently doing is not in compliance with ADEQ. Supervisor Dawson replied that she did not believe that all. She stated, *"What I'm saying is we can pass a resolution and the folks out in Diamond Star would be real happy if we just came in and said within a half mile radius of this*

old dumpsite, you can't come. Well, there's a whole lot of wells within a half mile radius of the old dumpsite, so we can't go in there and say that without knowing are there contaminants there, how deep are the wells that are pulling water. This well that [the Town of] Payson maybe bought is 550 gallons or whatever it is, it's a big drawdown if they start pumping." Jacque Griffin, Assistant County Manager/County Librarian, stated that the Board should remember that if there is going to be a policy that has something to do with wells not being pumped within a half-mile radius of the dumpsite, that's not the only dumpsite located in Gila County. She stated if the Board is talking about a County-wide solution, it needs to be very cautious about the location of the wells in relation to the many other dumpsites in Gila County, including active dumpsites. Vice-Chairman Martin stated that she read the Wellhead Protection Act and would like to discuss it with Mr. Kennedy as she believes it is more designed for another type of situation. Supervisor Dawson stated that in a discussion with Mr. Besich via email, he said there are a number of clean water specialists at ADEQ, and the Board may be better off to start with its own attorney and draft something to go to the Planning and Zoning Commission. She stated that the County is on notice of potential liability and she believes that ADEQ could tell the County, through the Public Works Department, how to protect itself, and that's the direction she would like to move toward. Chairman Sanchez inquired about who Supervisor Dawson meant when she said "our own attorney?" Supervisor Dawson replied that the information was from Mr. Besich and she wasn't positive but assumed since Mr. Kennedy is our water attorney that the Board would be asking him to look at how the County could be protected. She stated that was going to be one of her follow-up questions. Chairman Sanchez went over some of Mr. Kennedy's responses to questions in his letter to the Board [dated September 16, 2005]. He stated that Mr. Kennedy had given a couple of pages of information in response to the question, "What is Gila County's responsibility if the old dumpsite contaminates the Star Valley water supply?" Chairman Sanchez read a couple of other questions listed in Mr.

Kennedy's letter, as follows: 1)would there be advantages for Diamond Star to become a domestic water improvement district under Arizona Revised Statutes; and, should the County pass an ordinance that will restrict pumping within a certain distance from the old dumpsite? Chairman Sanchez thinks it's important between now and next Tuesday's Board meeting to decide if the Board wants Mr. Kennedy to look at all of those questions. Chairman Sanchez believes the primary concern, at this time, is what is the County's responsibility and liability in regard to the old dumpsite?

Upon motion by Vice-Chairman Martin, seconded by Supervisor Dawson, the Board unanimously voted to adjourn the meeting at 10:32 a.m.

José M. Sanchez, Chairman

ATTEST:

Steve L. Besich, County Manager/Clerk